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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,604	04/03/2001	Anthony Aquila		3275

7590 10/20/2006

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EXAMINER

GILLIGAN, CHRISTOPHER L

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/825,604	AQUILA ET AL.	
	Examiner	Art Unit	
	Luke Gilligan	3626	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 25 and 73-84.
Claim(s) withdrawn from consideration: 15-24 and 36-72.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: Claims 85-93 have been added and only claim 83 has been canceled.

Continuation of 11. does NOT place the application in condition for allowance because: In the remarks filed 9/11/06, Applicants argue in substance that (1) Borghesi does not teach choosing a valuation service based on cost and vehicle type nor weighting of either factor; (2) Borghesi fails to teach that the score is determined based on information regarding an insurance policy, a party involved in a loss, or how a loss was reported; (3) Brookes does not teach a measure of capacity for the repair shops; and (4) Borghesi teaches away from incorporating the teachings of Brookes

In response to Applicant's first argument, the Examiner respectfully submits that, as described in the previous Office Action, the user is notified that the total repair cost for the particular vehicle type is approaching a threshold value. Then, if a custom valuation is needed, it is determined that the claim should be assigned to a third party provider (i.e. a type of assignee). Clearly, this assignment is based on repair cost and vehicle type. Therefore, the Examiner respectfully maintains that Borghesi teaches this feature as recited in the claims.

Furthermore, since vehicle type is required to determine repair cost, it is respectfully submitted that this element has a higher weight. In response to Applicant's argument (2), the Examiner respectfully submits that the type of vehicle involved in the loss is a type of "information regarding a party involved in a loss" as recited in the claim. Since repair cost can only be calculated by knowing the vehicle type, it is maintained that Borghesi teaches the "score" is based on this type of information.

In response to Applicant's argument (3), the Examiner respectfully submits that the satisfaction index, as utilized in the system of Brookes, is a measure of capacity to complete vehicle repairs associated with insurance claims. It should be noted that the satisfaction index is based on past performance of repair shops. It is respectfully submitted that the performance of a repair shop is a measure of that repair shop's capacity to perform repairs. Therefore, the Examiner respectfully maintains that Brookes teaches this feature as recited in the claims.

In response to Applicant's argument (4), it is respectfully submitted that Applicants have not shown any teachings in Borghesi that specifically would have discouraged one of ordinary skill in the art not to look to the teachings of Brookes for profiling and ranking service providers. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." In re Gurley, 27 F.3d 551, 553 (Fed. Cir. 1994). In this case, there do not appear to be any teachings in Borghesi that specifically teach away from the profiling taught in Brookes.



C. LUKE GILLIGAN
PATENT EXAMINER